

Exhibit No. 5Date 1-31-07Bill No. SB-280**SB280 Sponsor's Testimony** (Sen. Joe Balyeat)

Madam Chair, members of the broad-minded State Admin committee, for the record I'm Sen. Joe Balyeat, representing SD34 in Gallatin & Broadwater Counties. I'm the former State Chairman of Montanans for Better Government; and that position is germane to the bill I bring you today – SB 280. I ask members of both parties to note that this bill is co-sponsored by Sen. Kaufmann and me. and Sen. Toole and Speaker Sales also co-sponsored it last session. Now I gotta tell you, anytime you see these four names together on a bill, it's gonna be an interesting bill. And these four sponsors proves this is definitely not a partisan idea; so I hope you'll all listen closely and don't make your mind up till you've heard all the facts.

This bill would change MT election law to allow cross-party candidate endorsement, or "fusion" as it is commonly called. This would allow a candidate to file for office under more than one party; and (assuming the candidate won the primary in each of those parties) his name would appear on the fall ballot under more than one party designation. All of the votes for that candidate, regardless of which party designation, would be added together to determine the winner of the election.

Historically, MT and many other states allowed cross-party candidate endorsement; but laws banning it swept through most of the states back in the late 19th century along with the Jim Crow laws and other voter restrictions in the South. At my last count, there were 10 other states that currently allow cross-party candidate endorsement, including three of our neighbors – Idaho, South Dakota, and Utah.

I'm sponsoring SB280 because I believe it is a creative solution to the problems caused by the increasing presence of third parties on MT's political landscape. For the first time ever, we now have a third party represented in MT's legislature. I assure – it won't be the last.

New York is a state that actively allows fusion. In New York, third parties play a vibrant, positive role in state politics. But presently in MT, third parties are consigned to nothing more than the role of spoiler – the best they can ever hope to do is spoil the election for one of the major party candidates. For instance, a Green Party candidate might steal just enough votes away to hand a normally Democrat seat to a Republican, or a Constitution Party candidate might steal just enough votes to hand a normally Republican district to a Democrat. By my count, that's exactly what happened about 17 times in just the last 4 legislative elections alone.

The consequence of this situation isn't good for anybody – 1) It isn't good for the people of the district because they end up being represented by a legislator who didn't even get 50% of the vote. 2) Its not good for the major party which normally represents the district, because they've lost a seat to the other party which, but for MT's convoluted election law, that party would've retained in it's column. 3) Its not good for the legislator who won either; because he's constantly hamstrung by the fact that he "only represents less than half the people in his district", despite the fact that he may have gotten more than 50% in a head-to-head race. 4) Because the third party candidate doesn't end up representing the district anyway, its not good for third parties in MT either; because third parties are then forever consigned to a negative stigma – the spoiler role. That when you cast a third party vote you're not just doing a neutral thing – throwing your vote away,

but you may even be doing a negative thing – spoiling the results of a particular legislative or statewide race.

The best way to explain how this works is to use an example which many of you may be familiar with – Rep. Jim “Landslide” Whitaker. This particular example involves a Constitution Party candidate spoiling the election for a Republican, but I urge those of you on the Democrat side of the aisle to see that this exact same situation can and does occur with Democrat legislators who have a Green Party spoiler. Landslide Whitaker was up for re-election in '02. A Constitutionalist filed against him, as well as a Democrat. Normally you'd expect an incumbent to win. But the Constitutionalist drew 200+ votes away (mostly from Republicans); and the Democrat won the seat with less than 50% of the vote. I would contend that situation was good for neither the district nor the Democrat. The district was represented by someone who didn't reflect the majority of district voters; and, the Democrat was hamstrung throughout his tenure and lost his seat in '04. And nobody will ever know how the '02 election would've turned out in a straight head-to-head match up. It's possible the Democrat would've run that race outright and would've had a solid base to perform his job and get re-elected.

If this fusion bill would've been law back then; Landslide Whitaker could've filed during the primary election as both a Republican and a Constitution party candidate. If he had beaten the Constitutionalist in that party's primary, he would've then gone on the fall election ballot as both a Republican and a Constitutionalist; and he would accumulate the votes from both his party listings on the ballot. He would've then had a two-way head-to-head contest with his Democrat opponent.

Again, this same principle would also work with Democrats who have Green Party or New Party opposition. In fact, I would contend that the only possible way that you, as Democrat incumbents, could possibly lose your seats is if you had Greens or New Party candidates file against you and spoil your race. Under this bill, you could file against them in the primary; take them out in June and then increase your chances in the fall by appearing on the ballot under all three party designations.

I carried this bill in the House in the 03 session. It got through State Admin committee; then had a very interesting discussion on the full House floor. One of my own Party members, who voted for the bill in committee decided to oppose it vigorously on the floor. With his opposition, the bill failed roughly 40-60 on a very non-partisan vote. Interestingly, in hindsight, he now admits I was right about this bill. So I urge the committee that, even if this idea is new to you, don't just dismiss it out of hand. Give it a close look, and ask me lots of questions.

The person who first got me interested in this subject was my old friend Bob Nichol, when he and I co-hosted a radio talk show together. It was a Cross-fire type show – he represented a liberal perspective, and I represented the right perspective, of course. Needless to say, we often clashed on various issues. But, interestingly, we both agreed that something must be done to revitalize the electoral process in MT, and we both agreed that “fusion” might be one way to do just that.

I'll sit and listen to proponents and opponents. I ask that a written copy of my testimony be entered in the record, and I reserve the right to close.